

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2312 OF 2006

Jagdish Shantilal Modi & Ors.

..Petitioners.

Vs.

Vinod R. Rawal & Ors.

..Respondents.

...

Mr. S.K. Talsania, Senior Advocate with Mr. Majoj Gujar i/b M/s.
C.R. Naidu & Co. for the Petitioners.

Mr. P.M. Patel for Respondent os.1 to 12.

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CORAM: DR. D.Y. CHANDRACHUD, J.

18th September, 2006.

P.C. :

1. This Petition is directed against an order dated 8th June, 2006 of the Industrial Court declining to condone the delay in instituting proceedings for setting aside an order dated 29th August, 2005 passed on a complaint of unfair labour practices.

2. A reference to the factual background is necessary in order to enable the Court to have due regard to the question as to whether a case for restoration has been made out.

3. A partnership firm by the name of Amratlal & Company was constituted under a deed of partnership dated 20th March, 1974. The three Petitioners before the Court were partners of the partnership firm together with five other persons until the year 1983. One of the partners expired in March 1984 and the business of the partnership was continued between the remaining seven partners. Jitendra Nanalal Trivedi who was the legal heir of the deceased partner filed a suit before this Court on the Original Side (Suit 2471 of 1984) for dissolution and accounts. By an order dated 12th August, 1985 the Court Receiver was appointed as Receiver of the assets of the partnership. The Plaintiff to the suit was appointed as agent of the Court Receiver. An agency agreement was executed on 2nd April, 1986. As agent of the Court Receiver the Plaintiff continued until 10th April, 1996 when it is stated that a notice to discontinue the agency was given to the Court Receiver. The Court Receiver is stated to have repossessed the assets of the erstwhile partnership on 17th June, 1996. During the pendency of the suit, five of the partners expired and their heirs

were brought on the record. Eventually on 24th December, 1999 consent terms came to be filed in the suit by which parties agreed that the partnership stood dissolved as on 15th March, 1984. The Consent Terms contained various provisions for the distribution of the assets of the partnership which may not be of moment to these proceedings. For the present, it would be necessary to note that clause 16 of the consent terms read with Annexure-III thereto made provision for the liabilities of the partnership and among them was an amount of Rs. 18 lacs which was estimated to be the “liability of the labourers excluding the liability of the staff members”. In pursuance of the consent terms a deed of assignment was entered into under which Petitioner No.1 took over the assets of the partnership firm at and for a consideration of Rs.45 lacs.

4. A complaint of unfair labour practices was instituted before the Industrial Court by 12 complainants who are respectively the First to Twelveth Respondents to these proceedings. Of these complainants, Respondents 4, 5 and 6

were Defendants to the suit. The complaint of unfair labour practices was filed on 30th October, 2001. This, it is material to note was after the suit itself was disposed of on 24th December, 1999 recording the dissolution of the partnership with effect from 15th March, 1984. Only the three Petitioners herein were impleaded as Respondents to the complaint of unfair labour practices. The complainants inter alia sought a declaration that unfair labour practices have been committed under items 5, 9 and 10 of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and sought a direction to the Respondents thereto to continue to deposit the monthly wages of all the complainant workmen every month. A payment of arrears in the amount of [Rs.37.92](#) lacs was sought. The Petitioners had engaged an advocate and had filed an affidavit in reply to the application for interim relief. The advocate, however, withdrew his appearance. The complaint was allowed by an order dated 29th August, 2005 by which the Petitioners herein were directed to pay all the arrears of wages with other benefits from 16th June, 1996 within a month from the date of the order.

5. The Petitioners moved an application for restoration under Section 31(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 together with an application for condonation of delay. The Petitioners set up a case therein that they had received a letter dated 4th October, 2005 from the advocate for the original complainants in the third week of November, 2005 along with a statement of outstanding of wages. The Petitioners stated that an application for a certified copy of the order was thereafter filed on 5th January, 2006 after seeking legal advice and the certified copy was ready as on 21st January, 2006. The application was filed on 1st February, 2006. In support of the application for condonation of delay the Petitioners submitted that they had engaged the services of an advocate for defending themselves, in the meantime, settlement talks were going on between the parties and several drafts of settlement terms had been exchanged. The Petitioners claimed that as a result the proceedings before the Industrial Court remained unattended. The First Petitioner also stated that he was

unable to take an active part in the proceedings due to his advanced age.

6. The application for condonation of delay was dismissed by an order dated 8th June, 2006. The Industrial Court held that the advocate appearing on behalf of the Petitioners had withdrawn his appearance on 7th February, 2003 of which a telegraphic intimation had been furnished. Thereafter upon an interim order being passed on 30th September, 2003, the Petitioners were called upon to comply by a notice of 11th November, 2003. The Court noted that another registered letter dated 4th October, 2005 was sent to all the Petitioners. The Industrial Court was of the view that the Petitioners were negligent in pursuing the proceedings and that no case for condonation has been made out.

7. On behalf of the Petitioners it has been submitted that the dismissal of the application for condonation of delay is a matter of grave prejudice in the facts and circumstances of the present case. Learned counsel submitted that save and except for

Complainants 3, 4, 11 and 12 who were recruited prior to the dissolution of the partnership, the other complainant workmen were recruited after the Court Receiver came to be appointed as Receiver of the assets of the partnership and the partnership itself stood dissolved. Learned counsel has submitted that several of the complainants were in fact defendants to the suit, being the legal heirs of the erstwhile partners. For instance, it was submitted that Complainants 3, 6, 7, 8 and 9 have disclosed the same address as the original plaintiff in the suit for dissolution of partnership. In sum and substance, it was urged that the complaint constituted a malafide and fraudulent attempt to foist the liabilities in respect of the dues of the workers most of whom were appointed after the partnership stood dissolved on only three of the erstwhile partners. It was urged that save and except for four of the complainants, all the other workmen had been appointed by the plaintiff to the suit for dissolution upon his appointment as agent of the Court Receiver. Learned counsel submitted that the Petitioners' contention that they were in the process of settling the outstanding liabilities is borne out by the fact that on 3^d January,

2001 an industrial settlement under Section 2(p) read with 18(1) of the Industrial Disputes Act, 1947 was entered into in respect of the workmen of the factory. The complainant workmen in the present case had been engaged at the head office. Hence, it was urged that there was no want of bona fides or negligence and the application for condonation should have been allowed.

8. On the other hand on behalf of the complainants before the Industrial Court, Respondents 1 to 12, learned counsel submitted that there was a want of good faith on the part of the Petitioners in pursuing the proceedings before the Industrial Court. Learned counsel submitted that the Petitioners were aware of the proceedings before the Industrial Court and having chosen to remain absent they cannot be heard to make a grievance at the present stage.

9. In my view, having heard the learned counsel appearing on behalf of the parties, it would be appropriate and proper if the delay on the part of the Petitioners in moving the application for

restoration is condoned and the Industrial Court is directed to consider the application for restoration on merits. The facts of the case would show that the Petitioners had in fact engaged an advocate to appear on their behalf. The advocate had withdrawn his appearance. The contention of the Petitioners that an effort was being made to resolve the dispute with the workmen to put an end to the entire controversy cannot be brushed aside having regard to the fact that a settlement was in fact arrived at with the factory workmen under the Industrial Disputes Act, 1947. Matters of condonation cannot be dealt with on a technical basis. Though the delay has to be satisfactorily explained, the requirement of an explanation for every day's delay cannot be stretched beyond reasonable limits. The nature of the challenge by the Petitioners to the order of the Industrial Court, in support of the application for restoration, has already been adverted to. At this stage without entering into a discussion on the merits thereof the nature of the challenge is such that it cannot be brushed aside without consideration. The contention of the Petitioners is that once there was a dissolution of the partnership, any employee engaged by the

agent of the Court Receiver thereafter would have to be dealt with by the agent of the Court Receiver and the liability in respect of those employees cannot be foisted on the Petitioners. Besides this, it has also been urged that the complaint which is instituted only against three of the erstwhile partners was wholly malafide. These defences would merit a closer consideration by the Industrial Court. In these circumstances, the impugned order of the Industrial Court dated 8th June, 2006 is quashed and set aside. The application for condonation of delay is allowed. The Industrial Court shall now decide upon whether the application for restoration (Restoration Application 5 of 2006) should be allowed after hearing the rival parties.

10. On the oral request of Counsel appearing for the Petitioners, Respondents 13 to 31 who are not parties to the proceedings before the Industrial Court are deleted from the array of parties. The aforesaid deletion, it is clarified, shall not prevent the Petitioners from moving an application for impleadment before the Industrial Court.

11. Counsel appearing for the complainant workmen before the Industrial Court states that until the restoration application is disposed of, no coercive steps shall be taken for enforcing the order of the Industrial Court dated 29th August, 2005. The Industrial Court is requested to expedite the disposal of the restoration application and to endeavour to do so within a period of six months from today.

The Petition is accordingly disposed of. In the circumstances, there shall be no order as to costs.